IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16547 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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K I PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MS HARSHAL PANDYA FOR MR PARESH UPADHYAY for the Petitioner
MS MANISHA SHAH, A.G.P. for Respondent No.1
RULE SERVED for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/03/2006

ORAL JUDGMENT

1. In the present petition, the petitioner who is a retired government servant has claimed interest on the delayed payment of retiral dues.

2. Short facts leading to the present petition are as follows:

2.1 The petitioner on crossing the age of superannuation retired from government service with effect from 30.08.1996. At the time of his retirement, the petitioner was facing departmental inquiry instituted by charge-sheet dated 05.12.1995. In fact, the petitioner was placed under suspension by order dated 10.05.1994. He was placed under suspension with effect from 18.05.1995. The petitioner superannuated while still under suspension. Thus, the petitioner remained under suspension for the period between 18.05.1994 till 31.08.1996.

2.2. Eventually, disciplinary authority upon conclusion of the inquiry dropped the charges against the petitioner by order dated 15.10.1997. Sometime thereafter, however, the respondents issued show cause notice on 01.04.1999; calling upon the petitioner to show cause why penalty should not be imposed upon him on the basis of the same inquiry, since the authorities proposed to disagree with the findings of the Inquiry Officer. The petitioner opposed the proposal and urged before the

authorities that earlier once having decided to drop the proceedings, it was not open for the government to reconsider the question of imposing the penalty.

2.3 Despite opposition from the petitioner, the respondents proceeded further for consideration of imposing penalty. Eventually, by an order dated 23.07.2001, the penalty of reduction of pension of the petitioner by Rs. 100/- per month for a period of one year was imposed. On 08.04.2002, the authorities issued show cause notice to the petitioner why the period spent by him under suspension should not be treated as such.

3. The petitioner approached this Court by filing Special Civil Application No. 4881 of 2003 challenging the penalty order dated 23.07.2001 as well as the proposal of the government not to regularize the period spent by the him under suspension. The said petition came to be allowed by this Court by judgment dated 17.07.2003. The learned Single Judge of this Court set aside the order of punishment dated 23.07.2001 by which the government had imposed reduction of Rs. 100/- per month from the pension payable to the petitioner for a period of one year. It was further provided that the respondents

shall treat the period of suspension as a period on duty for all purposes and to extend all the benefits available to him as a consequence thereof.

4. By virtue of the order passed by the learned Single Judge of this Court, the petitioner was entitled to receive pensionary benefits including actual salary for the period under which he was placed under suspension. The respondents were required to finalise and release unpaid amounts to the petitioner accordingly.

4.1 It is the case of the petitioner that though the respondents have since released such amounts there has been considerable delay in making the payments. The petitioner has given details of various amounts which came to be paid to him by the respondents pursuant to the said order passed by this Court. In Para 4.3 of the petition, the following details in this regard have been given :

“4.3. The petitioner respectfully states that the petitioner is paid his retirement and other dues as under:

(A) Gratuity : Total : Rs.2,10,639/-
(i) Rs.1,23,205 was paid on

09.04.1999(provisional payment)
(ii) Rs. 87,434 was paid on 06.04.2005(Balance amount)

(B) Leave Encashment:
(i) Rs.99,424 paid on 11.09.2002
(ii) Rs. 2816 paid on 15.3.2004(difference)
(iii)Rs. 6341 paid on 16.08.2004 (difference)
(C) Difference of pension Rs. 2,95,223 paid on 6.4.2005
(D) Commuted Value of Pension Rs.2,11,835 paid on 6.4.2005.
(E) Difference of Pay Rs.77374 paid on 25.3.2004."

5. There is no factual dispute about the above details given by the petitioner regarding the amounts indicated hereinabove and the dates of such payments. In this background, the question that is required to be considered by this Court is as to what extent the petitioner would be entitled to receive interest on delayed payments made to him.

6. The case of the petitioner as canvassed before this Court, by learned Advocate Ms. Harshal Pandya, appearing for Mr. Paresh Upadhyay is that the substantial amounts payable to the petitioner on account of his retirement were withheld and delayed by the government without any valid reasons. It is contended that the petitioner retired way back in the year 1996. His gratuity and pension were not finalised till the year 2004 and actual payments were made sometime thereafter. It was contended

that once the charges were dropped against the petitioner, the respondents ought to have released his post retiral benefits. Since, the charges were dropped even under ordinary circumstances he was entitled to receive the amount in question with interest. In the present case, there is further delay in releasing such amounts occasioned on account of the action of the government to reopen the issue of exonerating the petitioner in the departmental proceedings. It was contended that once the departmental proceedings were dropped against the petitioner, it was not open for the same authority to reconsider the same question and come to different conclusion and pass an order of penalty on the petitioner. It was further submitted that on this ground, learned Single Judge was pleased to set aside the order imposing penalty on the petitioner. It was also directed that the period during which the petitioner was placed under suspension will be treated as having been spent on duty for all purposes. In short it is contended that the delay in releasing payments should carry reasonable interest, since no part of the delay can be attributed to the petitioner.

7. Ms. Shah, learned Assistant Government Pleader,

however opposed the petition. She drew my attention to two detailed affidavits filed by the government, wherein it is sought to be suggested that there is no delay on part of the government in finalising the pensionary benefits of the petitioner. It is also sought to be suggested that the petitioner was himself responsible for delay in releasing his pensionary benefits including commutation of pension. It was contended that despite communication, the petitioner had not supplied certain details which were necessary before his pension could be finalised. In short it was urged that the petition deserves to be dismissed.

8. From the above discussion, it can be seen that though the petitioner retired with effect from 31.08.1996, substantial amount of his post retiral benefits were released in the year 2004 – 2005. Such amounts include unpaid gratuity, leave encashment, difference in pension and difference in salary payable to the petitioner. It can be seen that much of the delay has occasioned on account of two factors. Firstly, on account of pending departmental inquiry, the respondents were not in a position to finalise such pensionary benefits of the petitioner immediately upon his retirement. The inquiry

proceedings came to be dropped on 15.10.1997. Ordinarily, the respondents would have released the pensionary benefits upon dropping of the inquiry by order dated 15.10.1997. This is where one of the two aspects of the delay come into picture. Instead of releasing the pensionary benefits of the petitioner upon dropping of the proceedings, nearly one and half years later, the government came up with the proposal to reopen the question and show cause notice came to be issued on 01.04.1999. Despite opposition from the petitioner, the authorities imposed penalty of reduction of pension by Rs. 100/- per month for a period of one year by order dated 23.07.2001. This order as well as the proposal of the government to treat suspension period as not having been spent on duty came to be challenged by the petitioner before this Court in Special Civil Application No. 4881 of 2003. Said petition was allowed by order dated 17.07.2003. The penalty order was quashed. The suspension period was ordered to be treated as having been spent on duty. The respondents were required to release all pensionary benefits of the petitioner on the basis of said order. Even thereafter, further time was consumed in releasing actual payments. This is the second aspect of delay.

9. I find that there is considerable delay on the part of the respondents in releasing post retiral benefits of the petitioners. On the basis of order dated 15.10.1997, the petitioner should have received unpaid retiral dues. Even after passing order dated 23.07.2001, imposing penalty of reduction of pension of Rs. 100/- per month for one year, the government should have released all pensionary benefits. Despite such order, the petitioner was entitled to receive certain benefits which should have been released timely. This was also not done. Eventually, even when the order dated 17.07.2003 was passed by this Court, there was hindrance in releasing of post retiral benefits in favour of the petitioner. Further time was consumed in finalising such payments.

10. It is true that at one or two stages, certain communications were issued to the petitioner by the respondents to fulfill certain requirements. On 03.11.2003, the petitioner was called upon to give details of excess payment of Rs. 28,024/-, to which the petitioner immediately responded on 10.11.2003. Thereafter, on 10.12.2003, communication was made to the petitioner with respect to alleged excess payment and he was called personally by communication dated 16.12.2003.

On 17.05.2004 he was once again asked to remain personally present which according to the respondents he did not do. Thus, even accepting the case of the respondents at its very best, there has been some delay on the part of the petitioner for about six months, which might have contributed to delay in finalisaing his pension. It may be noted that the said communications have no relevance with respect to his release of other post retiral benefits such as leave encashment, unpaid salary and gratuity to be paid to him. It may be noted that as per the respondents the petitioner caused delayed in production of his fitness certificate, which caused further delay in finalising case of commutation of pension. One need not go into said aspect of the matter, since I find that the petitioner is not entitled to receive any interest on the delayed payment of commuted value of pension.

11. Suffice it to say that upon available material on record, delay of about six months can be attributed to the petitioner in finalisation of his pension. With this factual clarity in mind, one may examine the extent of delay caused by the respondents in payment of different amounts to the petitioner.

12. An amount of Rs. 1,23,205/- was paid to the petitioner as provisional gratuity on 09.04.1999. There is no reason why the amount should have been paid nearly three years after the retirement of the petitioner. In any case the charges against the petitioner were dropped. The petitioner shall therefore, receive the said amount with interest. In addition to the provisional gratuity, an amount of Rs. 87,434/- was paid on 06.04.2005. This amount shall also carry appropriate interest. Granting three months of period as a reasonable time to finalise the payment of the gratuity, the petitioner shall receive simple interest at the rate of 7% per annum after three months of his retirement i.e. from 01.12.1996 till such amounts were actually paid.

12.1. With respect to leave encashment, the petitioner was paid an amount of Rs. 99,424 on 11.09.2002. An amount of Rs. 2816/- was paid on 15.03.2004 and Rs. 6341/- was paid on 16.08.2004. Such amounts shall also carry simple interest at the rate of 7% from 01.12.1996. Since leave encashment could not be withheld, even if the petitioner was facing Departmental Inquiry, the said amounts shall carry interest from 01.09.1996 at the rate of 7% simple interest per annum

till actual payment thereof. The petitioner was paid an amount of Rs. 77,374/- on 25.03.2004 towards difference in salary. This includes the salary for the period during which he was under suspension and also difference in salary on account of introduction of Fifth Pay Commission recommendations. The said amount shall also carry simple interest at the rate of 7% per annum from 08.08.1998 (the date on which Pay Commission recommendations were implemented) till actual payments.

12.2 The petitioner was paid difference of pension of Rs. 2,95,223 on 06.04.2005. This was primarily, on account of implementation of Fifth Pay Commission recommendations. As noted earlier, I find that approximately a period six months can be attributed to the petitioner for delay in finalization of his pension, therefore, instead of interest running up to 06.04.2005 i.e. the actual date of payment, direction for interest shall be calculated till 06.10.2004. Learned Advocate for the petitioner places on record the calculation showing the difference in pension payable to the petitioner. The sheet gives break up of the amounts due and payable to the petitioner at different stages. On the basis of said sheet, it is provided that the petitioner shall receive

difference in pension along with 7% simple interest from the date when the difference in pension became due and payable or 08.08.1998 (the date on which Fifth Pay Commission recommendations were ordered to be implemented), whichever is later; till 06.10.2004 as provided hereinabove.

13. I do not find any justification for prayer of the petitioner to receive Commuted Vale of Pension with interest. It is true that commutation of the Pension of the petitioner was delayed for varied reasons. However, till the petitioner was permitted to commute his pension, he received full pension. When the petitioner enjoyed full benefits of the pension, he cannot now claim interest on the amount of Commuted Value of Pension, despite delay in permitting such commutation.

14. In the result the petition is allowed with the direction to make payment of interest as noted in Paragraph Nos. 12, 12.1 and 12.2 hereinabove. Rule is made absolute to the limited extent. No order as to costs.

[Akil Kureshi, J.]

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